

Department of Energy

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incurred, or not directly related to activities specified in the reclamation plan or other written authorization, may be used in support of a claim for reimbursement provided that the licensee determines the documentation is the only means available to document costs for which reimbursement is sought.

(e) The Department may audit, or require the licensee to audit, any documentation used to support a claim on a case-by-case basis and may approve, approve in part, or deny reimbursement of any claim in accordance with the requirements of this part. Documentation relied upon by a licensee in support of a claim for reimbursement shall be made available to the Department and retained by the licensee until 4 years after final payment of a claim is made by the Department.

(f) Each licensee should utilize generally accepted accounting principles consistently throughout the claim. These accounting principles, underlying assumptions, and any other information necessary for the Department to evaluate the claim shall be set forth in each claim.

(g) Following each annual appropriation by Congress, the Department will issue a Federal Register Notice announcing:

(1) A claim submission deadline for that fiscal year;

(2) Availability of funds for reimbursement of costs of remedial action;

(3) Whether the Department anticipates that approved claims for that fiscal year may be subject to prorated payment;

(4) Any changes in the Federal reimbursement ratio or maximum reimbursement ceiling for any active uranium or thorium processing site;

(5) Any revision in the per dry short ton limit on reimbursement for all active uranium processing sites; and

(6) Any other relevant information.

(h) A licensee shall certify, with respect to any claim submitted by it for reimbursement, that the work was completed as described in an approved reclamation plan or other authorization. In addition, the licensee shall certify that all costs for which reimbursement is claimed, all documentation relied upon in support of its costs, and all

statements or representations made in the claim are complete, accurate, and true. The certification shall be signed by an officer or other official of the licensee with knowledge of the contents of the claim and authority to represent the licensee in making the certification. Any knowingly false or frivolous statements or representations may subject the individual to penalties under the False Claims Act, sections 3729 through 3731 of title 31 United States Code, or any other applicable statutory authority; and criminal penalties under sections 286, 287, 1001 and 1002 of title 18, United States Code, or any other applicable statutory authority.

(i) All claims for reimbursement submitted to the Department shall be sent by registered or certified mail, return receipt requested. The Department reserves all rights under applicable law to recover any funds paid to licensees which an audit finds to not meet the requirements of this part.

§ 765.21 Procedures for processing reimbursement claims.

(a) The Department will conduct a preliminary review of each claim within 60 days after the claim submission deadline announced in the FEDERAL REGISTER Notice specified in § 765.20(g) to determine the completeness of each claim. Payments from the Fund to active uranium or thorium processing site licensees for approved costs of remedial action will be made simultaneously by the Department within 1 year of the claim submission deadline.

(b) After completing the preliminary review specified in paragraph (a) of this section, the Department may audit, or require the licensee to audit, any documentation used in support of such claim, request the licensee to provide additional information, or request the licensee to provide other clarification determined by the Department to be necessary to complete its evaluation of the claim. In addition, the Department reserves the right to conduct an inspection of the site to verify any information provided by the licensee in a claim for reimbursement, or in support thereof. Any information requested by the Department, if provided, must be submitted by the claimant within 60 days

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of receipt of the request unless the Department specifies in writing that additional time is provided.

(c) At any time during the review of a claim, the Department may request an informal conference with a licensee to obtain further information or clarification on any unresolved issue pertaining to the claim. While the licensee is not required to provide additional clarification requested by the Department, a failure to do so may result in the denial of that portion of the claim for which information is requested.

(d) Based upon the claim submitted and any additional information received by the Department, including any audit or site inspection if conducted, the Department shall complete a final review of all relevant information prior to making a reimbursement decision. When the Department determines it is not clear that an activity for which reimbursement is claimed was necessary to comply with UMTRCA or where appropriate, with applicable Agreement State requirements, the Department may consult with the appropriate regulatory authorities.

(e) A written decision regarding the Department's determination to approve, approve in part, or deny a claim will be provided to the licensee within 10 days of completion of the claim review. Within 45 days after the Department's issuance of a written decision to deny the claim due to inadequate documentation, the licensee may request the Department to reconsider its decision if the licensee provides reasonable documentation in accordance with § 765.20. If a licensee chooses not to submit the documentation, the licensee has the right to file a formal appeal to a claim denial in accordance with § 765.22. If a licensee chooses to submit the documentation, the Department will consider whether the documentation results in the Department's reversal of the initial decision to deny the claim and will inform the licensee of the Department's subsequent decision. The licensee may appeal that decision in accordance with § 765.22.

(f) If the Department determines that insufficient funds are available at any time to provide for complete payment of all outstanding approved claims, re-

imbursements of approved claims will be made on a prorated basis. A prorated payment of all outstanding approved claims for reimbursement, or any unpaid portion thereof, shall be made on the basis of the total amount of all outstanding approved claims, regardless of when the claims were submitted or approved.

(g) Notwithstanding the provisions of paragraph (f) of this section, or any other provisions of this part, any requirement for the payment or obligation of funds by the Department established by this part shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act (31 U.S.C. 1341).

[59 FR 26726, May 23, 1994, as amended at 68 FR 32957, June 3, 2003]

§ 765.22 Appeals procedures.

(a) Any appeal by a licensee of any Department determination subject to the requirements of this part, shall invoke the appeals process specified in paragraph (b) of this section.

(b) A licensee shall file an appeal of any Department determination subject to the requirements of this part with the Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Any appeal must be filed within 45 days from the date the licensee received notice, actual or constructive (i.e., publication in the FEDERAL REGISTER), of the Department's determination. Appeals must comply with the procedures set forth in 10 CFR part 1003, subpart C. The decision of the Office of Hearings and Appeals shall be the final decision of the Department. A licensee must file an appeal in order to exhaust its administrative remedies, and the receipt of an appellate decision is a prerequisite to seeking judicial review of any determination made under this part.

[59 FR 26726, May 23, 1994, as amended at 60 FR 15017, Mar. 21, 1995]

§ 765.23 Annual report.

The Department shall prepare annually a report summarizing pertinent information concerning claims submitted